

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Luis Villanueva,
Jose Eduardo Villanueva, and
Julio Perez, on behalf of themselves and others
similarly situated in the proposed FLSA
Collective Action,

Plaintiffs

Case No. 1:22-cv-07199-ER

**ANSWER and
AFFIRMATIVE DEFENSES**

-against-

G-Net Construction Corp.,
G-Net Construction Services LLC,
G-Net Realty Corporation, and
Joseph Nativo

Defendants

JURY TRIAL REQUESTED

Defendants, by and through their attorney Robert J. Fileccia, Esq., answer the Complaint of the plaintiffs, filed on August 23, 2022 (Document 1), and respectfully state and allege as follows:

**AS AND FOR AN ANSWER TO THE ALLEGATIONS
IN THE NATURE OF THE ACTION**

1. Deny the allegations contained in paragraph 1 of the Complaint.
2. Admit G-Net Construction Corp. prides itself as being “a leader in the renovation and new construction” business. Deny the other defendants are named in the website contained in the footnote cited on paragraph 2 of the Complaint.
3. Admit “Since 1968, the Nativo family has built tens of thousands of square feet of construction projects” and Deny the remaining allegations in paragraph 3 of the Complaint.
4. Deny the allegations in paragraph 4 of the Complaint.

5. Admit the existence of a Worker's Compensation Board proceeding previously against G-Net Realty Corporation in paragraph 5 of the Complaint, but Deny it is an example of an "insidious reputation of dodging the costs of doing business and gain a competitive advantage."
6. Admit the existence of a settlement between G-Net Construction Corp. and the State Insurance Fund in paragraph 6 of the Complaint, but Deny it is an example of G-Net Construction Corp.'s allegedly "insidious reputation of dodging the costs of doing business and gain a competitive advantage."
7. Deny the allegations in paragraph 7 of the Complaint.
8. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8 of the Complaint, leaving all questions of law to the trial of this action.
9. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9 of the Complaint, leaving all questions of law to the trial of this action.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS REGARDING
JURISDICTION AND VENUE**

10. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 10 of the Complaint, leaving all questions of law to the trial of this action.
11. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 of the Complaint, leaving all questions of law to the trial of this action.

12. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12 of the Complaint, leaving all questions of law to the trial of this action.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS REGARDING
THE PARTIES**

13. Deny the allegations in paragraph 13 of the Complaint.
14. Deny the allegations in paragraph 14 of the Complaint.
15. Deny the allegations contained in paragraph 15 of the Complaint, leaving all questions of law to the trial of this action.
16. Deny the allegations contained in paragraph 16 of the Complaint, leaving all questions of law to the trial of this action.
17. Deny the allegations in paragraph 17 of the complaint.
18. Deny the allegations in paragraph 18 of the complaint.
19. Deny the allegations contained in paragraph 19 of the Complaint, leaving all questions of law to the trial of this action.
20. Deny the allegations contained in paragraph 20 of the Complaint, leaving all questions of law to the trial of this action.
21. Deny the allegations contained in paragraph 21 of the Complaint.
22. Deny the allegations contained in paragraph 22 of the Complaint.
23. Deny the allegations contained in paragraph 23 of the Complaint, leaving all questions of law to the trial of this action.
24. Deny the allegations contained in paragraph 24 of the Complaint, leaving all questions of law to the trial of this action.

25. Admit the allegations contained in paragraph 25 of the Complaint.
26. Admit Defendant G-Net Construction Corp. has an annual gross volume of sales of not less than \$500,000 in paragraph 26 of the Complaint. Deny the remaining allegations contained in paragraph 26 of the Complaint, leaving all questions of law to the trial of this action.
27. Deny the allegations contained in paragraph 27 of the Complaint, leaving all questions of law to the trial of this action.
28. Deny the allegations contained in paragraph 28 of the Complaint, leaving all questions of law to the trial of this action.
29. Admit G-Net Services LLC is a domestic limited liability company organized and existing under the laws of the State of New York in paragraph 29 of the Complaint. Deny the remaining allegations contained in paragraph 29 of the Complaint.
30. Deny the allegations contained in paragraph 30 of the Complaint, leaving all questions of law to the trial of this action.
31. Deny the allegations contained in paragraph 31 of the Complaint, leaving all questions of law to the trial of this action.
32. Deny the allegations contained in paragraph 32 of the Complaint, leaving all questions of law to the trial of this action.
33. Admit G-Net Realty Corporation is a domestic corporation organized and existing under the laws of the State of New York in paragraph 33 of the Complaint. Deny the remaining allegations contained in paragraph 33 of the Complaint.
34. Deny the allegations contained in paragraph 34 of the Complaint, leaving all questions of law to the trial of this action.

35. Deny the allegations contained in paragraph 35 of the Complaint, leaving all questions of law to the trial of this action.
36. Deny the allegations contained in paragraph 36 of the Complaint, leaving all questions of law to the trial of this action.
37. Admit the allegations contained in paragraph 37 of the Complaint.
38. Admit Joseph Nativo is being sued individually. Deny the remaining allegations contained in paragraph 38 of the Complaint, leaving all questions of law to the trial of this action
39. Admit the allegations in paragraph 39 of the Complaint.
40. Admit the allegations in paragraph 40 of the Complaint.
41. Deny the allegations contained in paragraph 41 of the Complaint, leaving all questions of law to the trial of this action.
42. Deny the allegations contained in paragraph 42 of the Complaint.
43. Admit the individual defendant possesses operational control over the Corporate Defendants and controls significant functions of the Corporate Defendants. Deny the remaining allegations in paragraph 43 of the Complaint.
44. Deny the allegations contained in paragraph 44 of the Complaint, leaving all questions of law to the trial of this action.
45. Deny the allegations contained in paragraph 45 of the Complaint, leaving all questions of law to the trial of this action.
46. Deny the allegations contained in paragraph 46 of the Complaint, leaving all questions of law to the trial of this action.

47. Deny the allegations contained in paragraph 47 of the Complaint, leaving all questions of law to the trial of this action.
48. Deny the allegations contained in paragraph 48 of the Complaint, leaving all questions of law to the trial of this action.
49. Deny the allegations contained in paragraph 49 of the Complaint, leaving all questions of law to the trial of this action.
50. Deny the allegations contained in paragraph 50 of the Complaint, leaving all questions of law to the trial of this action.

**AS AND FOR AN ANSWER TO THE ALLEGED
FACTUAL ALLEGATIONS**

51. Deny the allegations contained in paragraph 51 of the Complaint.
52. Deny the allegations contained in paragraph 52 of the Complaint.
53. Deny the allegations contained in paragraph 53 of the Complaint.
54. Deny the allegations contained in paragraph 54 of the Complaint.
55. Deny the allegations contained in paragraph 55 of the Complaint.
56. Deny the allegations contained in paragraph 56 of the Complaint.
57. Deny the allegations contained in paragraph 57 of the Complaint.
58. Deny the allegations contained in paragraph 58 of the Complaint.
59. Deny the allegations contained in paragraph 59 of the Complaint.
60. Deny the allegations contained in paragraph 60 of the Complaint, leaving all questions of law to the trial of this action.
61. Deny the allegations contained in paragraph 61 of the Complaint, leaving all questions of law to the trial of this action.

62. Deny the allegations contained in paragraph 62 of the Complaint.
63. Deny the allegations contained in paragraph 63 of the Complaint.
64. Deny the allegations contained in paragraph 64 of the Complaint.
65. Deny the allegations contained in paragraph 65 of the Complaint.
66. Deny the allegations contained in paragraph 66 of the Complaint.
67. Deny the allegations contained in paragraph 67 of the Complaint.
68. Deny the allegations contained in paragraph 68 of the Complaint.
69. Deny the allegations contained in paragraph 69 of the Complaint.
70. Deny the allegations contained in paragraph 70 of the Complaint.
71. Deny the allegations contained in paragraph 71 of the Complaint.
72. Deny the allegations contained in paragraph 72 of the Complaint.
73. Deny the allegations contained in paragraph 73 of the Complaint.
74. Deny the allegations contained in paragraph 74 of the Complaint.
75. Deny the allegations contained in paragraph 75 of the Complaint.
76. Deny the allegations contained in paragraph 76 of the Complaint, leaving all questions of law to the trial of this action.
77. Deny the allegations contained in paragraph 77 of the Complaint, leaving all questions of law to the trial of this action.
78. Deny the allegations contained in paragraph 78 of the Complaint.
79. Deny the allegations contained in paragraph 79 of the Complaint.
80. Deny the allegations contained in paragraph 80 of the Complaint.
81. Deny the allegations contained in paragraph 81 of the Complaint.
82. Deny the allegations contained in paragraph 82 of the Complaint.

83. Deny the allegations contained in paragraph 83 of the Complaint.
84. Deny the allegations contained in paragraph 84 of the Complaint.
85. Deny the allegations contained in paragraph 85 of the Complaint.
86. Deny the allegations contained in paragraph 86 of the Complaint.
87. Deny the allegations contained in paragraph 87 of the Complaint.
88. Deny the allegations contained in paragraph 88 of the Complaint.
89. Deny the allegations contained in paragraph 89 of the Complaint.
90. Deny the allegations contained in paragraph 90 of the Complaint.
91. Deny the allegations contained in paragraph 91 of the Complaint.
92. Deny the allegations contained in paragraph 92 of the Complaint, leaving all questions of law to the trial of this action.
93. Deny the allegations contained in paragraph 93 of the Complaint, leaving all questions of law to the trial of this action.
94. Deny the allegations contained in paragraph 94 of the Complaint.
95. Deny the allegations contained in paragraph 95 of the Complaint.
96. Deny the allegations contained in paragraph 96 of the Complaint.
97. Deny the allegations contained in paragraph 97 of the Complaint.
98. Deny the allegations contained in paragraph 98 of the Complaint.
99. Deny the allegations contained in paragraph 99 of the Complaint, leaving all questions of law to the trial of this action.
100. Deny the allegations contained in paragraph 100 of the Complaint.
101. Deny the allegations contained in paragraph 101 of the Complaint.
102. Deny the allegations contained in paragraph 102 of the Complaint.

103. Deny the allegations contained in paragraph 103 of the Complaint.
104. Deny the allegations contained in paragraph 104 of the Complaint.
105. Deny the allegations contained in paragraph 105 of the Complaint.
106. Deny the allegations contained in paragraph 106 of the Complaint.
107. Deny the allegations contained in paragraph 107 of the Complaint.
108. Deny the allegations contained in paragraph 108 of the Complaint.
109. Deny the allegations contained in paragraph 109 of the Complaint, leaving all questions of law to the trial of this action.
110. Deny the allegations contained in paragraph 110 of the Complaint. The Complaint does not specify which defendant.
111. Deny the allegations contained in paragraph 111 of the Complaint. The Complaint does not specify which defendant.
112. Deny the allegations contained in paragraph 112 of the Complaint, leaving all questions of law to the trial of this action.
113. Deny the allegations contained in paragraph 113 of the Complaint, leaving all questions of law to the trial of this action.

**AS AND FOR AN ANSWER TO THE FLSA
COLLECTIVE ACTION ALLEGATIONS**

114. Deny the allegations contained in paragraph 114 of the Complaint, leaving all questions of law to the trial of this action.
115. Deny the allegations contained in paragraph 115 of the Complaint, leaving all questions of law to the trial of this action.

116. Deny the allegations contained in paragraph 116 of the Complaint, leaving all questions of law to the trial of this action.

117. Deny the allegations contained in paragraph 117 of the Complaint, leaving all questions of law to the trial of this action.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS REGARDING
THE FIRST CLAIM FOR RELIEF
(FLSA-Unpaid Overtime Wages, 29 U.S.C. §§ 201 et seq.)**

118. Defendants repeat and reiterate each and every denial hereinbefore asserted as to paragraphs “1 through 117” of the Complaint with the same force and effect as though the same were set forth at length herein in the answer to paragraph “118” of the Complaint, leaving all questions of law to the trial of this action.

119. Deny the allegations contained in paragraph 119 of the Complaint, leaving all questions of law to the trial of this action.

120. Deny the allegations contained in paragraph 120 of the Complaint, leaving all questions of law to the trial of this action.

121. Deny the allegations contained in paragraph 121 of the Complaint, leaving all questions of law to the trial of this action.

122. Deny the allegations contained in paragraph 122 of the Complaint, leaving all questions of law to the trial of this action.

123. Deny the allegations contained in paragraph 123 of the Complaint, leaving all questions of law to the trial of this action.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS REGARDING
THE SECOND CLAIM FOR RELIEF
(NYLL- Unpaid Overtime Wages)**

124. Repeats and reiterates each and every denial hereinbefore asserted as to the paragraphs “1 through 123” of the Complaint with the same force and effect as though the same were set forth at length herein in the answer to paragraph “124” of the Complaint, leaving all questions of law to the trial of this action.
125. Deny the allegations contained in paragraph 125 of the Complaint, leaving all questions of law to the trial of this action.
126. Deny the allegations contained in paragraph 126 of the Complaint, leaving all questions of law to the trial of this action.
127. Deny the allegations contained in paragraph 127 of the Complaint, leaving all questions of law to the trial of this action.
128. Deny the allegations contained in paragraph 128 of the Complaint, leaving all questions of law to the trial of this action.
129. Deny the allegations contained in paragraph 129 of the Complaint, leaving all questions of law to the trial of this action.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS REGARDING
THE THIRD CLAIM FOR RELIEF
(NYLL – Spread of Hours Pay)**

130. Repeats and reiterates each and every denial hereinbefore asserted as to the paragraphs “1 through “129” of the Complaint with the same force and effect as though the same were set forth at length herein in the answer to paragraph “130” of the Complaint, leaving all questions of law to the trial of this action.
131. Deny the allegations contained in paragraph 131 of the Complaint, leaving all questions of law to the trial of this action.

132. Deny the allegations contained in paragraph 132 of the Complaint, leaving all questions of law to the trial of this action.

133. Deny the allegations contained in paragraph 133 of the Complaint, leaving all questions of law to the trial of this action.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS REGARDING
THE FOURTH CLAIM FOR RELIEF
(NYLL WTPA – Failure to Provide Wage Notices)**

134. Repeats and reiterates each and every denial hereinbefore asserted as to the paragraphs “1 through “133” of the Complaint with the same force and effect as though the same were set forth at length herein in the answer to paragraph “134” of the Complaint, leaving all questions of law to the trial of this action.

135. Deny the allegations contained in paragraph 135 of the Complaint, leaving all questions of law to the trial of this action.

136. Deny the allegations contained in paragraph 136 of the Complaint, leaving all questions of law to the trial of this action.

137. Deny the allegations contained in paragraph 137 of the Complaint, leaving all questions of law to the trial of this action.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS REGARDING
THE FIFTH CLAIM FOR RELIEF
(Violation of Wage Statement Provisions of the NYLL)**

138. Repeats and reiterates each and every denial hereinbefore asserted as to the paragraphs “1 through “137” of the Complaint with the same force and effect as though the same were set forth at length herein in the answer to paragraph “138” of the Complaint, leaving all questions of law to the trial of this action.

139. Deny the allegations contained in paragraph 139 of the Complaint, leaving all questions of law to the trial of this action.

140. Deny the allegations contained in paragraph 140 of the Complaint, leaving all questions of law to the trial of this action.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS REGARDING
THE SIXTH CLAIM FOR RELIEF
(Failure to Pay Timely Wages)**

141. Repeats and reiterates each and every denial hereinbefore asserted as to the paragraphs “1 through “140” of the Complaint with the same force and effect as though the same were set forth at length herein in the answer to paragraph “141” of the Complaint, leaving all questions of law to the trial of this action.

142. Deny the allegations contained in paragraph 142 of the Complaint, leaving all questions of law to the trial of this action.

143. Deny the allegations contained in paragraph 143 of the Complaint, leaving all questions of law to the trial of this action.

144. Deny the allegations contained in paragraph 144 of the Complaint, leaving all questions of law to the trial of this action.

**AS AND FOR AN ANSWER TO THE ALLEGATIONS REGARDING
THE SEVENTH CLAIM FOR RELIEF
(Breach of Contract)**

145. Repeats and reiterates each and every denial hereinbefore asserted as to the paragraphs “1 through “144” of the Complaint with the same force and effect as though the same were set forth at length herein in the answer to paragraph “145” of the Complaint, leaving all questions of law to the trial of this action.

146. Deny the allegations contained in paragraph 146 of the Complaint, leaving all questions of law to the trial of this action.
147. Deny the allegations contained in paragraph 147 of the Complaint, leaving all questions of law to the trial of this action.
148. Deny the allegations contained in paragraph 148 of the Complaint, leaving all questions of law to the trial of this action.
149. Deny the allegations contained in paragraph 149 of the Complaint, leaving all questions of law to the trial of this action.
150. Deny the allegations contained in paragraph 150 of the Complaint, leaving all questions of law to the trial of this action.
151. Deny the allegations contained in paragraph 151 of the Complaint, leaving all questions of law to the trial of this action.
152. The Defendants deny any allegations not specifically responded to above. The Plaintiffs are not entitled to any relief set forth in their Prayer for Relief and Wherefore Clause.

FIRST AFFIRMATIVE DEFENSE

153. The Complaint fails to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

154. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

155. Defendants invoke the defenses, protections, and limitations of the Fair Labor Standards Act, 29 USC §201 et seq. ("FLSA").

FOURTH AFFIRMATIVE DEFENSE

156. Plaintiffs failed to mitigate any or all of their damages, if any exist, as required under the law and any damages awarded to Plaintiffs should be reduced or eliminated.

FIFTH AFFIRMATIVE DEFENSE

157. Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs have failed to meet and exhaust all necessary administrative remedies or procedures regarding such claims.

SIXTH AFFIRMATIVE DEFENSE

158. Some or all of the Plaintiffs' claims are barred by settlement agreements and releases.

SEVENTH AFFIRMATIVE DEFENSE

159. Some or all of the Plaintiffs' claims are barred by accord and satisfaction.

EIGHTH AFFIRMATIVE DEFENSE

160. Some or all of the Plaintiffs' claims are barred by the doctrine of release.

NINTH AFFIRMATIVE DEFENSE

161. Plaintiffs' claims are barred by the doctrines of waiver, estoppel and laches.

TENTH AFFIRMATIVE DEFENSE

162. Plaintiffs were a major contributing factor to the losses that form the basis of their complaints.

ELEVENTH AFFIRMATIVE DEFENSE

163. Plaintiffs' claims are barred because plaintiffs fall within a class in another action that had identical claims, which have already been adjudicated.

TWELFTH AFFIRMATIVE DEFENSE

164. At all times, Defendants acted in good faith and had reasonable grounds for believing their actions were in compliance with the FLSA.

THIRTEENTH AFFIRMATIVE DEFENSE

165. Defendants did not know or show reckless disregard for whether their conduct was prohibited by the FLSA.

FOURTEENTH AFFIRMATIVE DEFENSE

166. Some or all of the Plaintiffs' claims are barred by collateral estoppel, judicial estoppel, and res judicata.

FIFTEENTH AFFIRMATIVE DEFENSE

167. The Defendants assert, to the extent applicable, each and every affirmative defense set out in Rule 8(c)(1) of the Federal Rules of Civil Procedure.

SIXTEENTH AFFIRMATIVE DEFENSE

168. All actions taken by Defendants with respect to the Plaintiffs claims were supported by legitimate business reasons.

SEVENTEENTH AFFIRMATIVE DEFENSE

169. The Plaintiffs' claims are estopped by the submission of his or their own time records, for which Defendants compensated them for all overtime worked and claimed.

EIGHTEENTH AFFIRMATIVE DEFENSE

170. Defendants conduct was not willful.

NINETEENTH AFFIRMATIVE DEFENSE

171. At all times relevant to this litigation, the defendants complied with all applicable laws, rules, regulations and standards.

TWENTIETH AFFIRMATIVE DEFENSE

172. Defendants reserve the right to amend this Answer and to assert additional affirmative defenses and/or to supplement, alter or change this Answer to assert cross-claims or

counterclaims upon ascertaining more definite facts during and upon completion of discovery and investigations.

TWENTY FIRST AFFIRMATIVE DEFENSE

173. The Plaintiffs' claims are estopped by the submission of their own time records, for which Defendant G-Net Construction Corp. compensated them for all overtime worked or claimed.

WHEREFORE, the Defendants respectfully demand judgment:

- a) Dismissing plaintiffs' Complaint in its entirety with prejudice;
- b) Denying each and every demand and claim for relief contained in the Plaintiffs' Complaint;
- c) Awarding to the Defendants reimbursement for the costs and disbursements of defending this action, including attorney's fees, costs and disbursements of this action; and
- d) Granting Defendants such other and further relief as this Court deems just and proper.

Dated: November 3, 2022
Staten Island, New York

Respectfully submitted,

/s/ Robert J. Fileccia

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Collective Action Plaintiffs